

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

DAVANZIA, S.L., a Spanish corporation,

Plaintiff,

vs.

LASERSCOPE, INC., a California  
corporation, and AMERICAN MEDICAL  
SYSTEMS, INC., a Minnesota corporation,

Defendants.

LASERSCOPE, INC., a California  
corporation, and AMERICAN MEDICAL  
SYSTEMS, INC., a Minnesota corporation,

Cross-Complainant.

vs.

DAVANZIA, S.L., a Spanish corporation,

Cross-Defendant.

Case No. C07 00247 JF

**STIPULATED PROTECTIVE  
ORDER  
(AS MODIFIED BY THE COURT)**

**1. PURPOSES AND LIMITATIONS**

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than this litigation would be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied when a party seeks permission from the court to file material under seal.

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2 **2. DEFINITIONS**

3           2.1 Party: any party to this action, including all of its officers, directors,  
4 employees, representatives, consultants, and outside counsel (and their support staff).

5           2.2 Disclosure or Discovery Material: all items or information, regardless of  
6 the medium or manner generated, stored, or maintained (including, among other things,  
7 testimony, transcripts, or tangible things) that are produced or generated in disclosures or  
8 responses to discovery in this matter.

9           2.3 "Confidential" Information or Items: information (regardless of how  
10 generated, stored or maintained) or tangible things that qualify for protection under standards  
11 developed under F.R.Civ.P.26(c). Confidential information does not include any information  
12 produced by either party prior to March 7, 2008. As to information produced in response to the  
13 Court's order of February 22, 2008 ("Court's Order"), confidential information does not include  
14 anything other than American Medical Systems Iberica customer files produced in response to  
15 Section D of the Court's Order and information related to issues with the proper functioning of  
16 HPS units, which would be competitively sensitive in the hands of Laserscope's competitors,  
17 produced in response to Section B of the Court's Order. Davanzia reserves all rights to  
18 challenge the confidential designation of any information produced in response to the Court's  
19 Order, even if the information falls within the descriptions in the preceding sentence. That is,  
20 Laserscope may not designate any information produced in response to the Court's Order as  
21 confidential unless it falls within the above-state description, and Davanzia may challenge any  
22 such designations on the basis that the information does not qualify for protection under the  
23 standards developed under F.R.Civ.P.26(c).

24           2.4 Receiving Party: a Party that receives Disclosure or Discovery Material  
25 from a Producing Party.

26           2.5 Producing Party: a Party or non-party that produces Disclosure or  
27 Discovery Material in this action.  
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2.6 Designating Party: a Party or non-party that designates information or items that it produces in disclosures or in responses to discovery as "Confidential."

2.7 Protected Material: subject to the limitations on what Discovery Material is subject to this Protective Order as set forth in Paragraphs 1 and 2.3, any Disclosure or Discovery Material that is designated as "Confidential."

2.8 Counsel: (without qualifier): Outside Counsel and House Counsel (as well as their support staffs).

2.9 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

### 3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also any information copied or extracted therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by parties or counsel to or in court or in other settings that might reveal Protected Material.

### 4. DURATION

Even after the termination of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. The court shall not retain jurisdiction to enforce this Protective Order for more than six months following final disposition.

### 5. DESIGNATING PROTECTED MATERIAL

#### 5.1 Exercise of Restraint and Care in Designating Material for Protection.

Subject to the limitations on what Discovery Material is subject to this Protective Order as set forth in Paragraphs 1 and 2.3, each Party or non-party that designates information or items for protection under this Order must take care to limit any such designation to specific material that

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2 qualifies under Paragraphs 1 and 2.3 and the appropriate standards. A Designating Party must  
3 take care to designate for protection only those parts of material, documents, items, or oral or  
4 written communications that qualify - so that other portions of the material, documents, items, or  
5 communications for which protection is not warranted are not swept unjustifiably within the  
6 ambit of this Order.

7 Mass, indiscriminate, or routinized designations are prohibited. Designations that  
8 are shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to  
9 unnecessarily encumber or retard the case development process, or to impose unnecessary  
10 expenses and burdens on other parties), expose the Designating Party to sanctions.

11 If it comes to a Party's or a non-party's attention that information or items that it  
12 designated for protection do not qualify for protection, that Party or non-party must promptly  
13 notify all other parties that it is withdrawing the mistaken designation.

14 5.2 Manner and Timing of Designations. Subject to the limitations on what  
15 Discovery Material is subject to this Protective Order as set forth in Paragraphs 1 and 2.3, except  
16 as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a), below), or as  
17 otherwise stipulated or ordered, material that qualifies for protection under this Order must be  
18 clearly so designated before the material is disclosed or produced.

19 Designation in conformity with this Order requires:

20 (a) for information in documentary form (apart from transcripts of  
21 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend  
22 "CONFIDENTIAL" at the top of each page that contains protected material. If only a portion or  
23 portions of the material on a page qualifies for protection, the Producing Party also must clearly  
24 identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must  
25 specify, for each portion, that protection is being asserted ("CONFIDENTIAL").

26 When permitted, a Party or non-party that makes original documents or materials  
27 available for inspection need not designate them for protection until after the inspecting Party has  
28 indicated which material it would like copied and produced. During the inspection and before the

1 designation, all of the material made available for inspection shall be deemed  
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 3 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied and  
 4 produced, the Producing Party must determine which documents, or portions thereof, qualify for  
 5 protection under this Order, then, before producing the specified documents, the Producing Party  
 6 must affix the legend “CONFIDENTIAL” at the top of each page that contains Protected  
 7 Material. If only a portion or portions of the material on a page qualifies for protection, the  
 8 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
 9 markings in the margins) and must specify, for each portion, that protection is being asserted.

10 (b) for testimony given in deposition or in other pretrial or trial  
 11 proceedings, that the Party or non-party offering or sponsoring the testimony identify on the  
 12 record, before the close of the deposition, hearing, or other proceeding, all protected testimony.  
 13 When it is impractical to identify separately each portion of testimony that is entitled to  
 14 protection, and when it appears that substantial portions of the testimony may qualify for  
 15 protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the  
 16 record (before the deposition or proceeding is concluded) a right to have up to 20 days to identify  
 17 the specific portions of the testimony as to which protection is sought. Only those portions of the  
 18 testimony that are appropriately designated for protection within the 20 days shall be covered by  
 19 the provisions of this Stipulated Protective Order.

20 Transcript pages containing Protected Material must be separately bound by the  
 21 court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL”.

22 (c) for information produced in some form other than documentary,  
 23 and for any other tangible items, that the Producing Party affixes in a prominent place on the  
 24 exterior of the container or containers in which the information or item is stored the legend  
 25 “CONFIDENTIAL”. If only portions of the information or item warrant protection, the  
 26 Producing Party, to the extent practicable, shall identify the protected portions.

27 5.3 Inadvertent Failures to Designate. Subject to the limitations on what  
 28 Discovery Material is subject to this Protective Order as set forth in Paragraphs 1 and 2.3, if

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2 timely corrected, an inadvertent failure to designate qualified information or items as  
3 “Confidential” does not, standing alone, waive the Designating Party’s right to secure protection  
4 under this Order for such material. If material is appropriately designated as “Confidential” after  
5 the material was initially produced, the Receiving Party, on timely notification of the  
6 designation, must make reasonable efforts to assure that the material is treated in accordance  
7 with the provisions of this Order.

8 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

9 In addition to the language in Paragraph 2.3, a Party may challenge confidential  
10 designations by another party as set forth herein:

11 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s  
12 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary  
13 economic burdens, or a later significant disruption or delay of the litigation, a Party does not  
14 waive its right to challenge a confidentiality designation by electing not to mount a challenge  
15 promptly after the original designation is disclosed.

16 6.2 Meet and Confer. A Party that elects to initiate a challenge to a  
17 Designating Party’s confidentiality designation must do so in good faith and must begin the  
18 process by conferring directly (in voice to voice dialogue; other forms of communication are not  
19 sufficient) with counsel for the Designating Party. If the challenging Party cannot reach the  
20 Designating Party for voice to voice dialogue within four business hours, it may begin the  
21 process by conferring directly, by email, or by fax with the Designating Party. In conferring, the  
22 challenging Party must explain the basis for its belief that the confidentiality designation was not  
23 proper and must give the Designating Party an opportunity to review the designated material, to  
24 reconsider the circumstances. If no change in designation is offered within 36 hours of the  
25 challenging Party’s meet and confer email or fax, the Designating Party shall explain the basis  
26 for the designation of protection. A challenging Party may proceed to the next stage of the  
27 challenge process only if it has engaged in this meet and confer process first.  
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2           6.3    Judicial Intervention. A Party that elects to press a challenge to a  
3 confidentiality designation after considering the justification offered by the Designating Party  
4 may file and serve a properly noticed motion under Civil Local Rule 7 (and in compliance with Civil Local  
5 Rule 79-5, if applicable). The parties have agreed to abide by the following expedited briefing schedule:  
6 ~~and schedule:~~ after service of a motion, an opposition within three business days and a reply the  
7 following business day. The Parties agree to jointly request that the Court hear the motion as  
8 quickly as possible and explain any unresolved scheduling conflicts. The Motion shall identify  
9 the challenged material and set forth in detail the basis for the challenge. Each such motion must  
10 be accompanied by a competent declaration that affirms that the movant has complied with the  
11 meet and confer requirements imposed in the preceding paragraph and that sets forth with  
12 specificity the justification for the confidentiality designation that was given by the Designating  
13 Party in the meet and confer dialogue.

14           The burden of persuasion in any such challenge proceeding shall be on the  
15 Designating Party. Until the court rules on the challenge, all parties shall continue to afford the  
16 material in question protection to which it is entitled under the Producing Party's designation.

## 17   7.    ACCESS TO AND USE OF PROTECTED MATERIAL

18           7.1    Basic Principles. A Receiving Party may use Protected Material that is  
19 disclosed or produced by another Party or by a non-party in connection with this case only for  
20 prosecuting, appealing, defending, defending an appeal or attempting to settle this litigation.  
21 Such Protected Material may be disclosed only to the categories of persons and under the  
22 conditions described in this Order. When the litigation has been terminated, a Receiving Party  
23 must comply with the provisions of section 11, below (FINAL DISPOSITION).

24           With the exception of and subject to the need to transport copies of the Protected  
25 Material to depositions, hearings, vendors, and the like, Protected Material must be stored and  
26 maintained by a Receiving Party at a location and in a secure manner that ensures that access is  
27 limited to the persons authorized under this Order.  
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2           7.2    Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
3 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
4 disclose any information or item designated CONFIDENTIAL only to:

5                   (a)    the Receiving Party's Outside Counsel of record in this action, as  
6 well as employees of said Counsel to whom it is reasonably necessary to disclose the information  
7 for this litigation;

8                   (b)    current or former officers, directors, representatives and employees  
9 of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who  
10 have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

11                   (c)    the Court and its personnel;

12                   (d)    court reporters, their staffs, and professional vendors to whom  
13 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be  
14 Bound by Protective Order" (Exhibit A);

15                   (e)    during their depositions, third party witnesses who are current or  
16 former employees or representatives of either Party;

17                   (f)    during their depositions, third parties who are not current or former  
18 employees or representatives to whom disclosure is reasonably necessary and who have signed  
19 the "Agreement to Be Bound by Protective Order" (Exhibit A). Pages of transcribed deposition  
20 testimony or exhibits to depositions that reveal Protected Material must be separately bound by  
21 the court reporter and may not be disclosed to anyone except as permitted under this Stipulated  
22 Protective Order.

23                   (g)    the author or any recipient of the document or the original source  
24 of the information.

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2 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
3 LITIGATION

4 If a Receiving Party is served with a subpoena or an order issued in other  
5 litigation that would compel disclosure of any information or items designated in this action as  
6 "CONFIDENTIAL," the Receiving Party must so notify the Designating Party, in writing (by  
7 fax, if possible) immediately and in no event more than three court days after receiving the  
8 subpoena or order. Such notification must include a copy of the subpoena or court order.

9 The Receiving Party also must immediately inform in writing the Party who  
10 caused the subpoena or order to issue in the other litigation that some or all the material covered  
11 by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party  
12 must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action  
13 that caused the subpoena or order to issue.

14 The purpose of imposing these duties is to alert the interested parties to the  
15 existence of this Protective Order and to afford the Designating Party in this case an opportunity  
16 to try to protect its confidentiality interests in the court from which the subpoena or order issued.  
17 The Designating Party shall bear the burdens and the expenses of seeking protection in that court  
18 of its confidential material- and nothing in these provisions should be construed as authorizing or  
19 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

20 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

21 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
22 Protected Material to any person or in any circumstance not authorized under this Stipulated  
23 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating  
24 Party of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected  
25 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all  
26 the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment  
27 and Agreement to Be Bound" that is attached hereto as Exhibit A.  
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2 10. FILING PROTECTED MATERIAL

3 Without written permission from the Designating Party or a court order secured  
4 after appropriate notice to all interested persons, a Party ~~intending to file Protected Material with~~  
5 may not file in the public record any Protected Material in this action. A Party that seeks to file  
6 Protected Material under seal must do so in compliance with Civil Local Rule 79-5.

7 11. FINAL DISPOSITION

8 Unless otherwise ordered or agreed in writing by the Producing Party, within  
9 sixty days after the date on which either Party may serve notice of an appeal or the disposition of  
10 said appeal each Receiving Party must destroy or return all Protected Material to the Producing  
11 Party. As used in this subdivision, "all Protected Material" includes all copies, abstracts,  
12 compilations, summaries or any other form of reproducing or capturing any of the Protected  
13 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must  
14 submit a written certification to the Producing Party (and, if not the same person or entity, to the  
15 Designating Party) by the sixty day deadline that identifies (by category, where appropriate) all  
16 the Protected Material that was returned or destroyed and that affirms that the Receiving Party  
17 has not retained any copies, abstracts, compilations, summaries or other forms of reproducing or  
18 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
19 retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda,  
20 correspondence or attorney work product, even if such materials contain Protected Material. Any  
21 such archival copies that contain or constitute Protected Material remain subject to this

22 Protective Order as set forth in Section 4 (DURATION), above. Furthermore, the court shall not be required  
23 to return any Protected Material which has  
24 been lodged or filed with the court.

25 12. MISCELLANEOUS

26 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
27 person to seek its modification by the Court in the future.

28 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
Protective Order no Party waives any right it otherwise would have to object to disclosing or  
producing any information or item on any ground not addressed in this Stipulated Protective

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2 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of  
3 the material covered by this Protective Order.  
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6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

7 DATED: 3/27/08

  
Attorneys for Plaintiff

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10 DATED: 3-27-08

  
Attorneys for Defendant

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12 PURSUANT TO STIPULATION, IT IS SO ORDERED, (AS MODIFIED BY THE COURT).

13 DATED: 4/3/08

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Howard R. Lloyd  
United States Magistrate Judge  
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on \_\_\_\_\_ in the case of Davanzia, S.L. vs. Laserscope, Inc., Case No. C07 00247 JF. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_